

108TH CONGRESS
1ST SESSION

S. 1529

To amend the Indian Gaming Regulatory Act to include provisions relating to the payment and administration of gaming fees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 21), 2003

Mr. CAMPBELL (for himself and Mr. INOUE) introduced the following bill;
which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Indian Gaming Regulatory Act to include provisions relating to the payment and administration of gaming fees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Gaming Regu-
5 latory Act Amendments of 2003”.

6 **SEC. 2. PAYMENT AND ADMINISTRATION OF GAMING FEES.**

7 (a) DEFINITIONS.—Section 4(7) of the Indian Gam-
8 ing Regulatory Act (25 U.S.C. 2703(7)) is amended by
9 adding at the end the following:

1 “(G) TECHNOLOGICAL AIDS.—Notwith-
 2 standing any other provision of law, sections 1
 3 through 7 of the Act of January 2, 1951 (com-
 4 monly known as the ‘Gambling Devices Trans-
 5 portation Act’) (15 U.S.C. 1171 through 1177)
 6 shall not apply to any gaming described in sub-
 7 paragraph (A)(i) for which an electronic aid,
 8 computer, or other technological aid is used in
 9 connection with the gaming.”.

10 (b) NATIONAL INDIAN GAMING COMMISSION.—Sec-
 11 tion 5 of the Indian Gaming Regulatory Act (25 U.S.C.
 12 2704) is amended—

13 (1) by striking subsection (c) and inserting the
 14 following:

15 “(c) VACANCIES.—

16 “(1) IN GENERAL.—A vacancy on the Commis-
 17 sion shall be filled in the same manner as the origi-
 18 nal appointment.

19 “(2) SUCCESSORS.—Unless a member of the
 20 Commission is removed for cause under subsection
 21 (b)(6), the member may—

22 “(A) be reappointed; and

23 “(B) serve after the expiration of the term
 24 of the member until a successor is appointed.”;

25 and

1 (2) in subsection (e), in the last sentence, by in-
 2 serting “or disability” after “in the absence”.

3 (c) POWERS OF CHAIRMAN.—Section 6 of the Indian
 4 Gaming Regulatory Act (25 U.S.C. 2705) is amended by
 5 adding at the end the following:

6 “(c) DELEGATION.—The Chairman may delegate to
 7 an individual Commissioner any of the authorities de-
 8 scribed in subsection (a).

9 “(d) APPLICABLE AUTHORITY.—In carrying out any
 10 function under this section, a Commissioner serving in the
 11 capacity of the Chairman shall be governed by—

12 “(1) such general policies as are formally
 13 adopted by the Commission; and

14 “(2) such regulatory decisions, findings, and de-
 15 terminations as are made by the Commission.”.

16 (d) POWERS OF COMMISSION.—Section 7 of the In-
 17 dian Gaming Regulatory Act (25 U.S.C. 2706) is amend-
 18 ed—

19 (1) in paragraphs (1), (2), and (4) of sub-
 20 section (b), by striking “class II gaming” each place
 21 it appears and inserting “class II gaming and class
 22 III gaming”;

23 (2) by redesignating subsection (c) as sub-
 24 section (d);

1 (3) by inserting after subsection (b) the fol-
2 lowing:

3 “(c) STRATEGIC PLAN.—

4 “(1) IN GENERAL.—The Commission shall de-
5 velop a strategic plan for use in carrying out activi-
6 ties of the Commission.

7 “(2) REQUIREMENTS.—The strategic plan shall
8 include—

9 “(A) a comprehensive mission statement
10 describing the major functions and operations
11 of the Commission;

12 “(B) a description of the goals and objec-
13 tives of the Commission;

14 “(C) a description of the means by which
15 those goals and objectives are to be achieved,
16 including a description of the operational proc-
17 esses, skills and technology, and the human,
18 capital, information, and other resources re-
19 quired to achieve those goals and objectives;

20 “(D) a performance plan for achievement
21 of those goals and objectives that is consistent
22 with—

23 “(i) other components of the strategic
24 plan; and

1 “(ii) section 1115 of title 31, United
2 States Code;

3 “(E) an identification of the key factors
4 that are external to, or beyond the control of,
5 the Commission that could significantly affect
6 the achievement of those goals and objectives;
7 and

8 “(F) a description of the program evalua-
9 tions used in establishing or revising those
10 goals and objectives, including a schedule for
11 future program evaluations.

12 “(3) BIENNIAL PLAN.—

13 “(A) PERIOD COVERED.—The strategic
14 plan shall cover a period of not less than 5 fis-
15 cal years beginning with the fiscal year in which
16 the plan is submitted.

17 “(B) UPDATES AND REVISIONS.—The
18 strategic plan shall be updated and revised bi-
19 ennially.”; and

20 (4) in subsection (d) (as redesignated by para-
21 graph (2))—

22 (A) in paragraph (3), by striking “and” at
23 the end;

24 (B) by redesignating paragraph (4) as
25 paragraph (5); and

1 (C) by inserting after paragraph (3) the
 2 following:

3 “(4) the strategic plan for activities of the
 4 Commission described in subsection (c); and”.

5 (e) COMMISSION STAFFING.—Section 8 of the Indian
 6 Gaming Regulatory Act (25 U.S.C. 2707) is amended—

7 (1) in subsection (a), by striking “GS–18 of the
 8 General Schedule under section 5332” and inserting
 9 “level IV of the Executive Schedule under section
 10 5318”;

11 (2) in subsection (b)—

12 (A) by striking “(b) The Chairman” and
 13 inserting the following:

14 “(b) STAFF.—

15 “(1) IN GENERAL.—The Chairman”; and

16 (B) by striking the last sentence and in-
 17 serting the following:

18 “(2) COMPENSATION.—

19 “(A) IN GENERAL.—Staff appointed under
 20 paragraph (1) shall be paid without regard to
 21 the provision of chapter 51 and subchapter III
 22 of chapter 53, of title 5, United States Code,
 23 relating to General Schedule pay rates.

24 “(B) MAXIMUM RATE OF PAY.—The rate
 25 of pay for an individual appointed under para-

1 graph (1) shall not exceed the rate payable for
 2 level IV of the Executive Schedule under section
 3 5315 of title 5, United States Code.”; and
 4 (3) by striking subsection (c) and inserting the
 5 following:

6 “(c) TEMPORARY SERVICES.—

7 “(1) IN GENERAL.—The Chairman may procure
 8 temporary and intermittent services under section
 9 3109 of title 5, United States Code.

10 “(2) MAXIMUM RATE OF PAY.—The rate of pay
 11 for an individual for service described in paragraph
 12 (1) shall not exceed the daily equivalent of the max-
 13 imum rate payable for level IV of the Executive
 14 Schedule under section 5318 of title 5, United
 15 States Code.”.

16 (f) TRIBAL GAMING ORDINANCES.—Section 11 of the
 17 Indian Gaming Regulatory Act (25 U.S.C. 2710) is
 18 amended—

19 (1) in subsection (b)(2)(F), by striking clause
 20 (i) and inserting the following:

21 “(i) ensures that—

22 “(I) background investigations are
 23 conducted on the tribal gaming commis-
 24 sioners, key tribal gaming commission em-
 25 ployees, and primary management officials

and key employees of the gaming enterprise; and

“(II) oversight of primary management officials and key employees is conducted on an ongoing basis; and”;

(2) in subsection (d)—

(A) in paragraph (4)—

(i) by striking “(4) Except” and inserting the following:

“(4) REVENUE SHARING.—

“(A) IN GENERAL.—Except for any assessments that may be agreed to under paragraph (3)(C)(iii), nothing in this section confers on a State or political subdivision of a State authority to impose any tax, fee, charge, or other assessment on any Indian tribe or any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based on the lack of authority in the State or a political subdivision of the State to impose such a tax, fee, charge, or other assessment.

“(B) APPORTIONMENT OF REVENUES.—

The Secretary may not approve any Tribal-

1 State compact or other agreement that includes
2 an apportionment of net revenues with a State,
3 local government, or other Indian tribes un-
4 less—

5 “(i) in the case of apportionment with
6 other Indian tribes, the net revenues are
7 not distributable by the other Indian tribes
8 to members of the Indian tribes on a per
9 capita basis;

10 “(ii) in the case of apportionment
11 with local governments, the total amount
12 of net revenues exceeds the amounts nec-
13 essary to meet the requirements of clauses
14 (i) and (ii) of subsection (b)(2)(B), but
15 only to the extent that the excess revenues
16 reflect the actual costs incurred by affected
17 local governments as a result of the oper-
18 ation of gaming activities; or

19 “(iii) in the case of apportionment
20 with a State—

21 “(I) the total amount of net reve-
22 nues—

23 “(aa) exceeds the amounts
24 necessary to meet the require-
25 ments of clauses (i) and (ii) of

1 subsection (b)(2)(B) and clause
 2 (ii) of this subparagraph, if appli-
 3 cable; and

4 “(bb) is in accordance with
 5 regulations promulgated by the
 6 Secretary under subparagraph
 7 (C); and

8 “(II) a substantial economic ben-
 9 efit is rendered by the State to the In-
 10 dian tribe.

11 “(C) REGULATIONS.—Not later than 90
 12 days after the date of enactment of this para-
 13 graph, the Secretary shall promulgate regula-
 14 tions to provide guidance to Indian tribes and
 15 States on the scope of allowable assessments
 16 negotiated under paragraph (3)(C)(iii) and the
 17 apportionment of revenues negotiated in accord-
 18 ance with subparagraph (B).”;

19 (B) in paragraph (7)(B)(vii), by inserting
 20 “not later than 90 days after notification is
 21 made” after “the Secretary shall prescribe”;
 22 and

23 (C) by adding at the end the following:

24 “(10) EXTENSION OF TERM OF TRIBAL-STATE
 25 COMPACT.—Any Tribal-State compact approved by

1 the Secretary in accordance with paragraph (8) shall
 2 remain in effect for up to 180 days after expiration
 3 of the Tribal-State compact if—

4 “(A) the Indian tribe certifies to the Sec-
 5 retary that the Indian tribe requested a new
 6 compact not later than 90 days before expira-
 7 tion of the compact; and

8 “(B) a new compact has not been agreed
 9 on.”.

10 (g) MANAGEMENT CONTRACTS.—Section 12 of the
 11 Indian Gaming Regulatory Act (25 U.S.C. 2711) is
 12 amended—

13 (1) by striking the section heading and all that
 14 follows through “Subject” in subsection (a)(1) and
 15 inserting the following:

16 **“SEC. 12. MANAGEMENT CONTRACTS.**

17 “(a) CLASS II GAMING AND CLASS III GAMING AC-
 18 TIVITIES; INFORMATION ON OPERATORS.—

19 “(1) GAMING ACTIVITIES.—Subject”; and

20 (2) in subsection (a)(1), by striking “class II
 21 gaming activity that the Indian tribe may engage in
 22 under section 11(b)(1) of this Act,” and inserting
 23 “class II gaming activity in which the Indian tribe
 24 may engage under section 11(b)(1), or a class III

1 gaming activity in which the Indian tribe may en-
 2 gage under section 11(d),”.

3 (h) COMMISSION FUNDING.—Section 18 of the In-
 4 dian Gaming Regulatory Act (25 U.S.C. 2717) is amend-
 5 ed—

6 (1) in subsection (a)—

7 (A) by striking paragraphs (1) through (3)
 8 and inserting the following:

9 “(1) SCHEDULE OF FEES.—

10 “(A) IN GENERAL.—Except as provided in
 11 this section, the Commission shall establish a
 12 schedule of fees to be paid annually to the Com-
 13 mission, on a quarterly basis, by each gaming
 14 operation that conducts a class II gaming or
 15 class III gaming activity that is regulated, in
 16 whole or in part, by this Act.

17 “(B) RATES.—The rate of fees under the
 18 schedule established under subparagraph (A)
 19 that are imposed on the gross revenues from
 20 each operation that conducts a class II gaming
 21 or class III gaming activity described in that
 22 paragraph shall be (as determined by the Com-
 23 mission)—

24 “(i) a progressive rate structure levied
 25 on the gross revenues in excess of

1 \$1,500,000 from each operation that con-
 2 ducts a class II gaming or class III gaming
 3 activity; or

4 “(ii) a flat fee levied on the gross rev-
 5 enues from each operation that conducts a
 6 class II gaming or class III gaming activ-
 7 ity.

8 “(C) TOTAL AMOUNT.—The total amount
 9 of all fees imposed during any fiscal year under
 10 the schedule established under subparagraph
 11 (A) shall not exceed—

12 “(i) \$10,000,000 for each of fiscal
 13 years 2004 and 2005;

14 “(ii) \$11,000,000 for each of fiscal
 15 years 2006 and 2007; and

16 “(iii) \$12,000,000 for each of fiscal
 17 years 2008 and 2009.”; and

18 (B) by redesignating paragraphs (4)
 19 through (6) as paragraphs (2) through (4), re-
 20 spectively;

21 (2) by redesignating subsection (b) as sub-
 22 section (d);

23 (3) in paragraph (2) of subsection (d) (as re-
 24 designated by paragraph (2)), by striking “section
 25 19 of this Act” and inserting “section 28”; and

1 (4) by inserting after subsection (a) the fol-
2 lowing:

3 “(b) FEE PROCEDURES.—

4 “(1) IN GENERAL.—By a vote of not less than
5 2 members of the Commission, the Commission shall
6 adopt the schedule of fees provided for under this
7 section.

8 “(2) FEES ASSESSED.—In assessing and col-
9 lecting fees under this section, the Commission shall
10 take into account the duties of, and services pro-
11 vided by, the Commission under this Act.

12 “(3) REGULATIONS.—The Commission shall
13 promulgate such regulations as are necessary to
14 carry out this subsection.

15 “(c) FEE REDUCTION PROGRAM.—

16 “(1) IN GENERAL.—In making a determination
17 of the amount of fees to be assessed for any class
18 II gaming or class III gaming activity under the
19 schedule of fees under this section, the Commission
20 may provide for a reduction in the amount of fees
21 that otherwise would be collected on the basis of—

22 “(A) the extent and quality of regulation
23 of the gaming activity provided by a State or
24 Indian tribe, or both, in accordance with an ap-
25 proved State-tribal compact;

1 “(B) the extent and quality of self-regu-
2 lating activities covered by this Act that are
3 conducted by an Indian tribe; and

4 “(C) other factors determined by the Com-
5 mission, including—

6 “(i) the unique nature of tribal gam-
7 ing as compared with commercial gaming,
8 other governmental gaming, and charitable
9 gaming;

10 “(ii) the broad variations in the na-
11 ture, scale, and size of tribal gaming activ-
12 ity;

13 “(iii) the inherent sovereign rights of
14 Indian tribes with respect to regulating the
15 affairs of Indian tribes;

16 “(iv) the findings and purposes under
17 sections 2 and 3;

18 “(v) the amount of interest or invest-
19 ment income derived from the Indian gam-
20 ing regulation accounts; and

21 “(vi) any other matter that is con-
22 sistent with the purposes under section 3.

23 “(2) RULEMAKING.—The Commission shall
24 promulgate such regulations as are necessary to
25 carry out this subsection.”.

1 (i) ADDITIONAL AMENDMENTS.—The Indian Gaming
2 Regulatory Act is amended—

3 (1) by striking section 19 (25 U.S.C. 2718);

4 (2) by redesignating sections 20 through 24 (25
5 U.S.C. 2719 through 2723) as sections 23 through
6 27, respectively;

7 (3) by inserting after section 18 (25 U.S.C.
8 2717) the following:

9 **“SEC. 19. INDIAN GAMING REGULATION ACCOUNTS.**

10 “(a) IN GENERAL.—All fees and civil forfeitures col-
11 lected by the Commission in accordance with this Act
12 shall—

13 “(1) be maintained in separate, segregated ac-
14 counts; and

15 “(2) be expended only for purposes described in
16 this Act.

17 “(b) INVESTMENTS.—

18 “(1) IN GENERAL.—The Commission shall in-
19 vest such portion of the accounts maintained under
20 subsection (a) as are not, in the judgment of the
21 Commission, required to meet immediate expenses.

22 “(2) TYPES OF INVESTMENTS.—Investments
23 may be made only in interest-bearing obligations of
24 the United States guaranteed as to both principal
25 and interest by the United States.

1 “(c) SALE OF OBLIGATIONS.—Any obligation ac-
 2 quired with funds in an account maintained under sub-
 3 section (a)(1) (except special obligations issued exclusively
 4 to those accounts, which may be redeemed at par plus ac-
 5 rued interest) may be sold by the Commission at the mar-
 6 ket price.

7 “(d) CREDITS TO INDIAN GAMING REGULATORY AC-
 8 COUNTS.—The interest on, and proceeds from, the sale or
 9 redemption of any obligation held in an account main-
 10 tained under subsection (a)(1) shall be credited to and
 11 form a part of the account.

12 **“SEC. 20. MINIMUM STANDARDS.**

13 “(a) CLASS I GAMING.—Notwithstanding any other
 14 provision of law, class I gaming on Indian land—

15 “(1) shall remain within the exclusive jurisdic-
 16 tion of the Indian tribe having jurisdiction over the
 17 Indian land; and

18 “(2) shall not be subject to this Act.

19 “(b) CLASS II GAMING.—

20 “(1) IN GENERAL.—Subject to paragraph (2),
 21 an Indian tribe shall retain primary jurisdiction over
 22 regulation of class II gaming activities conducted by
 23 the Indian tribe.

1 “(2) CONDUCT OF CLASS II GAMING.—Any class
2 II gaming activity shall be conducted in accordance
3 with—

4 “(A) section 11; and

5 “(B) regulations promulgated under sub-
6 section (d).

7 “(c) CLASS III GAMING.—

8 “(1) IN GENERAL.—Subject to paragraph (2),
9 an Indian tribe shall retain primary jurisdiction over
10 regulation of class III gaming activities conducted
11 by the Indian tribe.

12 “(2) CONDUCT OF CLASS III GAMING.—Any
13 class III gaming operated by an Indian tribe under
14 this Act shall be conducted in accordance with—

15 “(A) section 11; and

16 “(B) regulations promulgated under sub-
17 section (d).

18 “(d) RULEMAKING.—

19 “(1) IN GENERAL.—

20 “(A) PROMULGATION.—Not later than 180
21 days after the date of enactment of the Indian
22 Gaming Regulatory Act Amendments of 2003,
23 the Commission shall develop procedures under
24 subchapter III of chapter 5 of title 5, United

1 States Code, to negotiate and promulgate regu-
2 lations relating to—

3 “(i) the monitoring and regulation of
4 tribal gaming;

5 “(ii) the establishment and regulation
6 of internal control systems; and

7 “(iii) the conduct of background in-
8 vestigation.

9 “(B) PUBLICATION OF PROPOSED REGULA-
10 TIONS.—Not later than 1 year after the date of
11 enactment of the Indian Gaming Regulatory
12 Act Amendments of 2003, the Commission shall
13 publish in the Federal Register proposed regu-
14 lations developed by a negotiated rulemaking
15 committee in accordance with this section.

16 “(2) COMMITTEE.—A negotiated rulemaking
17 committee established in accordance with section
18 565 of title 5, United States Code, to carry out this
19 subsection shall be composed only of Federal and In-
20 dian tribal government representatives, a majority of
21 whom shall be nominated by and be representative
22 of Indian tribes that conduct gaming in accordance
23 with this Act.

24 “(e) ELIMINATION OF EXISTING REGULATIONS.—

1 “(1) IN GENERAL.—Except as provided in para-
 2 graph (2), as of the date that is 1 year after the
 3 date of enactment of the Indian Gaming Regulatory
 4 Act Amendments of 2003, regulations establishing
 5 minimum internal control standards promulgated by
 6 the Commission that are in effect as of the date of
 7 enactment of the Indian Gaming Regulatory Act
 8 Amendments of 2003 shall have no force or effect.

9 “(2) EXCEPTION FOR AFFIRMATION OF EXIST-
 10 ING REGULATIONS.—Notwithstanding paragraph
 11 (1), if, before the date of enactment of the Indian
 12 Gaming Regulatory Act Amendments of 2003, the
 13 Commission certifies to the Secretary of the Interior
 14 that the Commission has promulgated regulations
 15 that establish minimum internal control standards
 16 that meet the requirements of subsection (d)(1)(A)
 17 and were developed in consultation with affected In-
 18 dian tribes, the regulations shall—

19 “(A) be considered to satisfy the require-
 20 ments of paragraph (1); and

21 “(B) remain in full force and effect.

22 **“SEC. 21. USE OF NATIONAL INDIAN GAMING COMMISSION**
 23 **CIVIL FINES.**

24 “(a) ACCOUNT.—Amounts collected by the Commis-
 25 sion under section 14 shall—

1 “(1) be deposited in a separate Indian gaming
2 regulation account established under section
3 19(d)(1)(A); and

4 “(2) be available to the Commission, as pro-
5 vided for in advance in Acts of appropriation, for
6 use in carrying out this Act.

7 “(b) USE OF FUNDS.—

8 “(1) IN GENERAL.—The Commission may pro-
9 vide grants and technical assistance to Indian tribes
10 using funds secured by the Commission under sec-
11 tion 14.

12 “(2) USES.—A grant or financial assistance
13 provided under paragraph (1) may be used only—

14 “(A) to provide technical training and
15 other assistance to an Indian tribe to strength-
16 en the regulatory integrity of Indian gaming;

17 “(B) to provide assistance to an Indian
18 tribe to assess the feasibility of conducting non-
19 gaming economic development activities on In-
20 dian land;

21 “(C) to provide assistance to an Indian
22 tribe to devise and implement programs and
23 treatment services for individuals diagnosed as
24 problem gamblers; or

1 “(D) to provide to an Indian tribe 1 or
 2 more other forms of assistance that are not in-
 3 consistent with this Act.

4 “(c) SOURCE OF FUNDS.—Amounts used to carry out
 5 subsection (b) may be derived only from funds—

6 “(1) collected by the Commission under section
 7 14; and

8 “(2) authorized for use in advance by an Act of
 9 appropriation.

10 “(d) REGULATIONS.—The Commission may promul-
 11 gate such regulations as are necessary to carry out this
 12 section.

13 **“SEC. 22. TRIBAL CONSULTATION.**

14 “In carrying out this Act, the Secretary of the Inte-
 15 rior, Secretary of the Treasury, and Chairman of the Com-
 16 mission shall involve and consult with Indian tribes to the
 17 maximum extent practicable, as appropriate, in a manner
 18 that is consistent with the Federal trust and the govern-
 19 ment-to-government relationship that exists between In-
 20 dian tribes and the Federal Government.”; and

21 (4) by inserting after section 27 (as redesign-
 22 nated by paragraph (2)) the following:

23 **“SEC. 28. AUTHORIZATION OF APPROPRIATIONS.**

24 “(a) IN GENERAL.—Subject to section 18, there is
 25 authorized to be appropriated to carry out this Act, for

1 fiscal year 1998 and each fiscal year thereafter, an
2 amount equal to the amount of funds derived from the
3 assessments authorized by section 18(a).

4 “(b) ADDITIONAL AMOUNTS.—Notwithstanding sec-
5 tion 18, in addition to amounts authorized to be appro-
6 priated by subsection (a), there are authorized to be ap-
7 propriated \$2,000,000 to fund the operation of the Com-
8 mission for fiscal year 1998 and each fiscal year there-
9 after.”.

○